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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 HELEN and MARTIN YACK, on behalf of
14 themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 WASHINGTON MUTUAL, INC.; SUNLAN-
020105, LLC; SHERIFF'S DEPARTMENT,
18 COUNTY OF LOS ANGELES,
CALIFORNIA; CLERK'S OFFICE,
19 COUNTY OF BUTTE, CALIFORNIA; and
DOES 1-10,
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21 Defendants.
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Case No. C-07-5858 PJH

CLASS ACTION

**DECLARATION OF JAMES F.
MCCABE IN SUPPORT OF
DEFENDANT WASHINGTON
MUTUAL BANK'S MOTION FOR
SANCTIONS**

Date: July 2, 2008
Time: 9:00 a.m.
Place: Courtroom 3, 17th floor
Hon. Phyllis J. Hamilton

Complaint filed: March 6, 2008

1 I, JAMES F. McCABE, declare as follows:

2 I am an attorney licensed to practice law in the State of California and am admitted to
3 practice before this Court. I am a partner with the law firm of Morrison & Foerster LLP, counsel
4 for Defendant Washington Mutual Bank. I submit this Declaration in Support of Defendant
5 Washington Mutual Bank's Motion for Sanctions. I make this Declaration based on personal
6 knowledge. If called as a witness, I would testify to the facts set forth below.

7 1. Attached as Exhibit A is a true and correct copy of the voluntary bankruptcy
8 petition filed by Plaintiffs Helen and Martin Yack on July 20, 2007 pursuant to Chapter 7 of the
9 Bankruptcy Code in the Bankruptcy Court for the Eastern District of California.

10 2. Attached as Exhibit B is a true and correct of the discharge order issued by the
11 bankruptcy court on November 16, 2007.

12 3. On April 2, 2008, I spoke with Dean Paik, counsel for Plaintiffs, by telephone and
13 asked that he voluntarily dismiss this case because Plaintiffs lack standing to assert their claims.
14 Plaintiffs filed a petition in bankruptcy after the events underlying this suit. That petition
15 operated to transfer any claim to the bankruptcy trustee. However, the claims did not revert to
16 Plaintiffs on discharge, since Plaintiffs did not schedule any claim in their bankruptcy petition.
17 Any claim is thus still held by the bankruptcy trustee.

18 4. On April 3, 2008, I provided Mr. Paik with copies of Plaintiffs' bankruptcy
19 petition and discharge order, attached hereto as Exhibits A and B, as well as citations to the
20 controlling legal authorities. Attached as Exhibit C is a true and correct of my April 3
21 correspondence with Mr. Paik. Mr. Paik declined to dismiss the complaint.

22 5. On April 17, 2008, I again spoke by telephone with Mr. Paik and renewed
23 Washington Mutual's request that Plaintiffs dismiss the complaint. Mr. Paik declined to do so.

24 6. On April 29, 2008, I caused a copy of Defendant's Notice of Motion and Motion
25 for Sanctions, as well as supporting papers, to be served on Mr. Paik as well as Plaintiffs'
26 attorney Paul Grobman. Those papers were served under cover of a letter requesting that the
27 operative complaint be withdrawn within the time required under Rule 11(c)(2) of the Federal
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1 Rule of Civil Procedure. Attached as Exhibit D is a true and correct copy of my April 29 letter to
2 Mr. Paik and Mr. Grobman.

3 7. Plaintiffs' counsel declined to take corrective action within 21 days after service of
4 the instant motion.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct and that this Declaration was executed in San Francisco, California,
7 on this 28th day of May, 2008.

8
9 /s/ James F. McCabe
James F. McCabe